In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 986

AARON ROSENZWEIG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In January, 1945, petitioner began a livestock slaughtering business with two associates, under the name of Central Packing Company (Tr. 34). The arrangement was that each man would invest $25,000 in the business, draw a weekly salary, and share equally any remaining profit or loss (Tr. 38, 58, 63). Petitioner was required to co-sign all checks and approve all bills (Tr. 39, 61–62, 68). Petitioner signed, as "owner" of the Company, applications for subsidies under the Emergency Price Control Act of 1942.[1] The applications certified that the applicant

[1] Under this Act, subsidies were paid to livestock slaughterers to give relief from a roll-back in the ceiling prices of meat and

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had not violated price ceiling regulations covering sale of beef (Tr. 17–19). After subsidies were paid, it was discovered that the company had unlawfully sold beef in excess of ceiling prices during the period covered by the applications. Petitioner's two associates were subsequently indicted and convicted for this violation of the Emergency Price Control Act. Petitioner was not indicted, and there has been no showing that he knew about the illegal sales.

It was determined administratively that, because of the violations of the Act, the subsidy applications were invalid, and this determination was upheld by the Emergency Court of Appeals. *Rosenzweig* v. *General Services Administration,* 299 F. 2d 22, certiorari denied, 369 U.S. 818. Accordingly, Central Packing Company was concededly liable to make restitution of the subsidy payments it received. However, the Emergency Court of Appeals held that it did not have jurisdiction to determine petitioner's individual liability for this debt.

This action for restitution was then brought. After trial, the district court held petitioner liable, finding that he was either a partner or a co-venturer of his two associates. The court ruled that a partner is not absolved from liability for partnership debts because the debt arose from criminal activity on the part of other partners (Pet. App. 15), and the court

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to encourage necessary production. 50 U.S.C. App. (1946 ed.) 902(e); 10 Fed. Reg. 4241 (April 20, 1945) (effective January 19, 1945). See *Rosenzweig* v. *General Services Administration*, 299 F. 2d 22, 25–26 (Em. Ct. of App.), certiorari denied, 369 U.S. 818.

of appeals affirmed without opinion. *Rosenzweig* v. *United States*, 337 F. 2d 856.

It is clear that invalid subsidy payments were made to Central Packing Company and that petitioner and his associates had the benefit of these payments, which were either distributed to them or were used to pay business debts for which they would have been individually liable (Tr. 65–66). Both California (where the company was located) and other jurisdictions hold individual partners or joint venturers liable for return of benefits unlawfully received by the partnership or venture, irrespective of whether they participated in the wrongdoing.[2] *Gibbon* v. *Henley*, 131 Cal. 6, 63 Pac. 61 (1900); *First National Bank of Altoona* v. *Turchetta*, 407 Pa. 511, 181 A. 2d 285 (1962); *Herweck's Paint & Wallpaper Co.* v. *C.I.T. Corporation*, 123 F. 2d 989 (C.A. 5). The cases cited by petitioner (Pet. 13–14) are not to the contrary, since none of them involved the restitution of benefits paid to the partnership.[3] In *Prairie Oil &*

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[2] Since the right to restitution here asserted by the United States rests on federal statute and regulation, it would appear that the question of petitioner's individual liability is a matter of federal law. Cf. *Clearfield Trust Co.* v. *United States*, 318 U.S. 363. There is no reason, however, why the federal rule should be different from the California law.

[3] In *Graham* v. *Meyer*, Fed. Cas. No. 5673 (C.C.S.D.N.Y.), the court refused to hold a partner liable for the statutory penalty of forfeiting collateral held by the partnership for a usurious loan negotiated by his co-partner. However, the court indicated that a suit in equity against both partners for return of the collateral would lie. In *First Nat. Bank* v. *Connolly* (erroneously cited at page 13 of the petition as *Hutchins* v. *Turner*), 172 Ore. 434, 138 P. 2d 613 (1943), the court could find that only a small part of the funds converted by defendant's partner was used by the partnership.

Gas Co. v. *Shanblum,* 294 Fed. 894 (C.A. 5), certiorari denied, 265 U.S. 580, defendant's associates were acting for their own benefit, and neither defendant nor the partnership derived any benefit from their conduct. *Gordon* v. *United States,* 347 U.S. 909, and *United States* v. *A & P Trucking Co.,* 358 U.S. 121, 126–127, are also inapposite since they involved the question of imposing criminal liability on a partner on the basis of knowledge or acts of his co-partners or employees.

No conflict of decisions is presented and the disposition of the lower courts is clearly correct. There is no occasion for further review by this Court.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

APRIL 1965.

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